

Charles Clark  
 NAME  
F-74636  
 PRISON NUMBER  
P.O. Box 2500  
 CURRENT ADDRESS OR PLACE OF CONFINEMENT  
Susanville, California 96127  
 CITY, STATE, ZIP CODE

2254	✓	1983
FILING FEE PAID		
Yes	✓	No
HYP MOTION FILED		
Yes	✓	No
COPIES SENT TO		
Court	✓	ProSe

<b>FILED</b>
JUN - 2 2008
CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY <u>LM</u> DEPUTY

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

Charles Clark  
 (FULL NAME OF PETITIONER)  
 PETITIONER

v.

Kathy Prosper (warden)  
 (NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED  
 PERSON HAVING CUSTODY OF PETITIONER (E.G., DIRECTOR OF THE  
 CALIFORNIA DEPARTMENT OF CORRECTIONS))  
 RESPONDENT

and

People of the State of California  
 The Attorney General of the State of  
 California, Additional Respondent.

Civil No. '08 CV 0989 W RBB  
 (TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254  
 BY A PERSON IN STATE CUSTODY

- Name and location of the court that entered the judgment of conviction under attack: Superior Court, County of Los Angeles (Pomona South District)
- Date of judgment of conviction: May 8, 2007
- Trial court case number of the judgment of conviction being challenged: KA078839
- Length of sentence: Four (4) years at 80% or (38 mos.)

CR

5. Sentence start date and projected release date: MAY 23<sup>rd</sup>, 2007 / June 10, 2008

6. Offense(s) for which you were convicted or pleaded guilty (all counts):

Burglary 2<sup>nd</sup> (459)  
Prior Strike Enhancement (1170.12 AND 667(b)-(1))

7. What was your plea? (CHECK ONE)

- (a) Not guilty ☐  
 (b) Guilty ☒  
 (c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)

- (a) Jury ☐  
 (b) Judge only ☒

9. Did you testify at the trial?

- ☐ Yes ☒ No

### DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?

- ☐ Yes ☒ No

11. If you appealed in the California Court of Appeal, answer the following:

- (a) Result: \_\_\_\_\_  
 (b) Date of result, case number and citation, if known: \_\_\_\_\_  
 \_\_\_\_\_  
 (c) Grounds raised on direct appeal: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:

- (a) Result: ~~Denied~~  
 (b) Date of result, case number and citation, if known: MAY 14, 2008 / S158621  
 \_\_\_\_\_  
 \* (c) Grounds raised: ~~NONE~~  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

- (a) Result: \_\_\_\_\_
- (b) Date of result, case number and citation, if known: \_\_\_\_\_
- (c) Grounds raised: \_\_\_\_\_

### COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

☒ Yes ☒ No

\* 15. If your answer to #14 was "Yes," give the following information:

- (a) California Superior Court Case Number: KA078839
- (b) Nature of proceeding: Writ of habeas Corpus
- (c) Grounds raised: 1) Ineffective Assistance of Counsel  
2) Unauthorized Sentence Enhancement  
3) 6<sup>th</sup> & 14<sup>th</sup> Amendment Violation of U.S.C
- (d) Did you receive an evidentiary hearing on your petition, application or motion?  
☐ Yes ☒ No
- (e) Result: Denied
- (f) Date of result: July 2007

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

☒ Yes ☐ No

17. If your answer to #16 was "Yes," give the following information:

- (a) California Court of Appeal Case Number: B-201778(2d District)
- (b) Nature of proceeding: Writ of habeas Corpus petitioning the Sentence
- (c) Grounds raised: ~~ineffective~~  
1) Ineffective Assistance of Counsel  
2) The imposition of an unauthorized sentencing enhancement
- (d) Did you receive an evidentiary hearing on your petition, application or motion?  
☐ Yes ☒ No
- (e) Result: Denied without points and authorities
- (f) Date of result: September 2007

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Supreme Court?

☒ Yes ☐ No

19. If your answer to #18 was "Yes," give the following information:

- (a) California Supreme Court Case Number: S158621
- (b) Nature of proceeding: Writ of habeas Corpus petitioning the Sentence
- (c) Grounds raised: 1) Ineffective Assistance of Counsel  
2) The imposition of an unauthorized sentencing enhancement  
3) Prior Strike Washout Period
- (d) Did you receive an evidentiary hearing on your petition, application or motion?  
☐ Yes ☒ No
- (e) Result: Denied without points and authorities
- (f) Date of result: May 14, 2008

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court, containing the grounds raised in this federal Petition, explain briefly why you did not:

I was out to Court from Lassen County in Superior Court  
San Bernardino County City of China. The time had  
lapsed terminating my opportunity to file.

#### COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your first federal petition for writ of habeas corpus challenging this conviction?

☒ Yes ☐ No (If "YES" SKIP TO #22)

(a) If no, in what federal court was the prior action filed? \_\_\_\_\_

(i) What was the prior case number? \_\_\_\_\_

(ii) Was the prior action (CHECK ONE):

☐ Denied on the merits?

☐ Dismissed for procedural reasons?

(iii) Date of decision: \_\_\_\_\_

(b) Were any of the issues in this current petition also raised in the prior federal petition?

☐ Yes ☐ No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

☐ Yes ☐ No

#### CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:** The petitioners 6<sup>th</sup> Amendment right of the United States Constitution was violated where by he signed A plea Agreement per prosecutions offer due to ineffective Assistance of Counsel  
Supporting FACTS (state *briefly* without citing cases or law) Petitioner was arrested for attempting to shoplift A portable DVD player, and charged with Second Degree Burglary. He was informed by counsel that he was A 3<sup>rd</sup> Striker with A maximum exposure of 25 years to life. Counsel made no effort to protect the petitioners rights, privileges, and immunities against A prior conviction charge (dated 9-17-91) well over 10 years ago. The petitioner was free of prison custody And the comission of A new felony for over 10 years. This amounts to A washout period. Instead he recieved 2 years for Burglary<sup>2nd</sup> And 2 Additional years for A prior conviction dated 9-17-91. 1170.12 (iii)(E) And 1192.7 prohibit plea barging by the pro-secution concerning determinant sentencing.

Did you raise GROUND ONE in the California Supreme Court?

☒ Yes ☐ No.

(b) **GROUND TWO:** 14<sup>th</sup> Amendment right violation of the United States Constitution where by the trial Court imposed an unauthorized sentencing for a non-violent non-serious offense

Supporting FACTS (state briefly without citing cases or law): Petitioner contends as an alleged "STRIKER" he was denied a STRIKE hearing upon his request. The trial Court imposed the double the base term rule based on counsel's deliberate investigatory omission which prejudiced him at the sentencing phase of the proceedings. He had factual and meritorious history concerning grounds for dismissal of prior conviction enhancement. In the past he suffered a conviction for second Degree Robbery which he paid his debt to Society (64 mos.) in state prison 1991 - 1996 He was on parole for 13 mos. discharged violation free in 1997. This is his second prison term.

Did you raise GROUND TWO in the California Supreme Court?

☒ Yes ☐ No.

(c) **GROUND THREE:** Violation of The California Constitution  
Article I Section 28 F under proposition 8

Supporting FACTS (state briefly without citing cases or law): This Section bars the use of the double the base term rule for non-violent second term offenders after having suffered a prior serious felony conviction.

Did you raise **GROUND THREE** in the California Supreme Court?

☒ Yes ☐ No.



(d) **GROUND FOUR:** Superior Court of California Los Angeles County Pomona South was in violation of Statutory Law under 1170.12 (iii)(E)/1192.7(B)

Supporting FACTS (state briefly without citing cases or law):

According to these laws there are plea Bargaining limitation concerning prior felony convictions which states plea bargaining shall not be used by the prosecution. These charges must be proven. The petitioner's prior conviction dated 9-17-91 was per plea Agreement.

Did you raise **GROUND FOUR** in the California Supreme Court?

☐ Yes ☒ No.

23. Do you have any petition or appeal now pending in any court, either state or federal, pertaining to the judgment under attack?

☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: \_\_\_\_\_

(b) Case Number: \_\_\_\_\_

(c) Date action filed: \_\_\_\_\_

(d) Nature of proceeding: \_\_\_\_\_

(e) Grounds raised: \_\_\_\_\_

(f) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: Rita Smith  
Los Angeles County (Pomona California)

(b) At arraignment and plea: Rita Smith  
Los Angeles County (Pomona California)

(c) At trial: I signed a plea bargain Agreement

(d) At sentencing: Rita Smith  
Los Angeles County (Pomona California)

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding: N/A

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☐ Yes ☒ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☐ Yes ☒ No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court: \_\_\_\_\_

MAY 28<sup>th</sup> 2008

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

MAY 28<sup>th</sup> 2008

(DATE)

Charles Clark

SIGNATURE OF PETITIONER

JS44

(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

## I (a) PLAINTIFFS

Charles Clark

Prosper, et al

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Lassen  
(EXCEPT IN U.S. PLAINTIFF CASES)

**FILING FEE PAID**  
Yes ☒ No ☒  
**PT MOTION FILED**  
Yes ☒ No ☒  
**COMPLAINT**  
Court 1st

**FILED**  
JUN - 2 2008  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY SM  
DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) ATTORNEYS (IF KNOWN)  
Charles Clark  
PO Box 2500  
Susanville, CA 96127  
F-74636

'08 CV 0989 W RBB

## II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question  
(U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PT                         | DEF                        |   | PT                         | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(p)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

## VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 6/2/2008

SIGNATURE OF ATTORNEY OF RECORD

R. Miller

CR